

SECOND REGULAR SESSION

# SENATE BILL NO. 944

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GOODE.

Pre-filed December 12, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To amend chapter 256, RSMo, by adding thereto four new sections relating to the regulation of floodway development, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 256, RSMo, is amended by adding thereto four new sections, to be known as sections 256.275, 256.276, 256.278, and 256.279, to read as follows:

**256.275. As used in sections 256.275 to 256.278, the following terms shall mean:**

- (1) "Agency", the state emergency management agency;
- (2) "Bridge or culvert reconstructions", the total replacement of an existing bridge or culvert, including substructure and superstructure, on the existing road alignment or on an alignment within one hundred feet upstream or downstream of the existing alignment in an urban area, or within five hundred feet upstream or downstream of the existing alignment in a rural area;
- (3) "Construction", the placement, erection, or reconstruction of any building or structure, any filling or excavation, the installment of any utility, or the storage of any materials. Construction includes, but is not limited to, modifications to an existing building which would increase the building's outside dimensions, channel modifications and enclosures, roads, bridges, culverts, levees, bank protection, walls, fences, and any other man-made activity that would modify the physical features of a floodway with respect to the storage or conveyance of flood waters. Construction does not include normal maintenance and repair activities or farming operations such as discing and plowing;
- (4) "Floodway", the channel of a river, lake, or stream and that portion of the

adjacent land area that is needed to safely store and convey flood waters. Where floodways have been delineated for regulatory purposes, the mapped lines show the floodway encroachment limits and shall be used. For other areas, floodway limits shall be estimated, using hydrologic and hydraulic calculations, to preserve adequate conveyance and storage so that state increases for the one hundred year frequency flood would not exceed one-tenth of a foot;

(5) "Rural areas", all areas of this state not classified as urban areas;

(6) "Urban areas", areas of the state where residential, commercial, or industrial development currently exists or, based on land use plans or controls, is expected to occur within ten years of the application date. In determining urban areas, the agency shall consider the expertise of local officials, regional and local planning commissions, city and county planners, or private development planners, as well as all available mapping. Areas with only isolated or widely scattered buildings shall not be classified as urban areas;

(7) "Worst-case analysis", the calculation of the maximum increases in flood heights, velocities, and damages a project would cause due to conveyance and storage losses considering both the project alone and the combined effects of other existing construction and construction that could reasonably be anticipated to be proposed in the locality. Flood events up to and including the one hundred year frequency flood shall be used in this analysis. The flood discharge that would just overtop a levee or floodwall shall be used for this analysis.

256.276. 1. The provisions of sections 256.275 to 256.278 shall apply to all construction in the floodways of the Cuivre, Meramec, Mississippi, and Missouri Rivers. All construction in the floodways of these rivers shall require a permit pursuant to sections 256.275 to 256.278 from the agency.

2. The following activities are exempt from the provisions of sections 256.275 to 256.278:

(1) Installation of field tile systems, tile outlet structures, and any water or sediment control construction activity in any floodway land (overbank) area that would not obstruct flood flows such as grade stabilization structures and waterways;

(2) Installation of irrigation equipment in any floodway land (overbank) area;

(3) Work on private lakes that would not impact the dam or traverse the lake, including but not limited to the construction of boat docks, bank stabilization, and maintenance dredging;

(4) Removal of brush, woody vegetation, trash, or other debris;

(5) Routine maintenance and repair of existing structures;

(6) Maintenance and repair, to preserve design capacity and function, of artificially improved stream channels, drainage ditches, levees, and pumping stations;

(7) Maintenance and repair of existing bridge and culvert structures, including dredging to restore the waterway opening to the original design cross section, and superstructure replacement that would not reduce the waterway opening. As used in this subdivision, "maintenance" does not include increasing the height of an existing roadway;

(8) Widening of bridge decks;

(9) Culvert extensions of up to one hundred percent of the original length, but not exceeding forty feet in length, provided the extension involves no change in alignment or reduction in size from the existing culvert;

(10) Removal of bridge and culvert structures, provided no materials are placed in a way that would obstruct normal or flood flows;

(11) Installation of fences in rural areas; and

(12) Construction of farm-related buildings where the finished floor elevation is one foot above the one hundred year flood level.

256.278. 1. Any applicant desiring a permit under the provisions of sections 256.275 to 256.278 shall file with the agency an application consisting of a properly executed application form and all plans and information required to determine the effect of the construction on the carrying capacity of the stream. All portions of the application form, including the name and address of the applicant, a description of the proposed activity, the location of the proposed activity, and the names and addresses of all adjoining property owners, shall be completed and all required attachments shall be submitted before a determination of permissibility shall be made.

2. When necessary or helpful to obtain information required for its evaluation, the agency shall issue a notice of the application to potentially impacted parties, allowing a period of twenty-one days for comment. This notice procedure shall generally be limited to major projects such as levees and channel modifications.

3. Construction that would result in an obstruction to flood flows or a reduction in flood storage capacity in a delineated floodway shall not be permitted unless the application shows the requirements of this subsection are met. Permits shall be granted for construction that would not singularly or cumulatively as of August 28, 2004, result in flood damages or potential flood damages outside the project right-of-way due to increases in flood heights or velocities. Absent contrary evidence, this standard shall be considered met if, for the worst-case

analysis, the application shows that:

(1) Any water surface profile increase would be contained within the channel banks, or within existing vertical extensions of the channel banks, such as within the design protection grade of existing levies or floodwalls, or within flood easements; or

(2) The water surface profile increase would not exceed one-tenth of one foot from a single development; or

(3) The water surface profile increase would not exceed one-half of one foot cumulatively in any period after August 28, 2004; and

(a) Any increase in average channel velocity would not be beyond the scour velocity of the predominant soil type of the channel; or

(b) Increased scour, erosion, and sedimentation would be prevented by the use of riprap or other design measures.

4. The agency may, by issuance of a statewide permit, grant approval for specific types of activities such as minor boat docks, utility crossings, and navigation structures, which meet the standards defined in sections 256.275 to 256.278. After the issuance of a statewide permit, no application or further authorization shall be required by the agency for activities meeting the requirements of the statewide permit. Statewide permits shall be issued only after notice and opportunity for public review and comment.

5. Applications not meeting the requirements of sections 256.275 to 256.278 shall be denied. If an application for permit is denied, the agency shall submit a letter, based on the administrative record, to the applicant, explaining the reasons for denial. The application may be resubmitted for consideration if it can be modified to meet the agency's objections as specified in the letter of denial.

6. When the agency becomes aware of an unauthorized activity or permit violation, the agency shall conduct an investigation to determine the facts regarding the activity or violation and shall advise the responsible party what actions are required to comply with state statutes. If the responsible party fails to perform the specified actions, enforcement shall be sought as determined by the agency to be necessary and appropriate. Investigations may be initiated by the agency on its own or in response to complaints involving activities undertaken without a permit, or activities not in compliance with the requirements of a permit. Complaints shall be in writing and shall contain the name, address, and telephone number of the party believed to be responsible, the nature of the alleged violation, the location of the activity, and the name of the body of water affected.

7. The approval or denial of an application for permit under sections 256.275 to 256.278 shall be considered a final administrative decision and shall be subject

to judicial review in accordance with chapter 536, RSMo.

8. (1) A person commits the crime of misrepresentation of a material fact when such person knowingly misrepresents a material fact or conceals a material fact on an application for a permit under sections 256.275 to 256.278;

(2) All incidents of suspected fraud or abuse regarding flood insurance claims or other federal or state assistance related to flooding incidents known by the agency shall be referred to the attorney general's office for appropriate action and such violations may be filed in the county where the violations occur by either the prosecuting attorney of such county or by the attorney general's office;

(3) Misrepresentation of a material fact is a class C felony.

9. Compliance with the provisions of sections 256.275 to 256.278 shall not exempt an applicant from complying with any local zoning or other permit requirements.

256.279. In accordance with the provisions of the Missouri Sunset Act and unless otherwise reauthorized pursuant to section 23.253, RSMo:

(1) Any new program authorized under the provisions of sections 256.275 to 256.278 shall automatically sunset six years after the effective date of sections 256.275 to 256.278; and

(2) Sections 256.275 to 256.278 shall terminate on September first of the year following the year in which any new program authorized under sections 256.275 to 256.278 is sunset, and the revisor of statutes shall designate such section and this section in a revision of bill for repeal.

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